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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,346	12/16/2003	David L. Patton	86559F-P	6021

7590 Pamela R. Crocker Patent Legal Staff Eastman Kodak Company 343 State Street Rochester, NY 14650-2201	01/28/2008
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EXAMINER	
KENNEDY, SHARON E	

ART UNIT	PAPER NUMBER
1615	

MAIL DATE	DELIVERY MODE
01/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/737,346

Applicant(s)

PATTON ET AL.

Examiner

Sharon E. Kennedy

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-90 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5-10, 43-55, 58, 77-84 and 87-90 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 12, 13, 22-42, 57, 59-65, 67, 73, 74 and 85 is/are allowed.
- 6) ☒ Claim(s) 1, 4, 11, 14-21, 56, 66, 68-72, 75, 76, 86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims 3-10, 43-55, 58, 77-84, 87-90 drawn to an invention nonelected without traverse in the reply filed on May 25, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

However, claim 4 is rejoined as comprising patentable subject matter and not presenting a burden for examination.

Specification

The disclosure is objected to because of the following informalities: The "cross Reference to Related Applications" section needs to be updated to include the U.S. Serial Numbers. See also your published paragraph [0036]

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 11, 14-17, 20, 21, 56, 66, 68-72, 75, 76, 86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is particularly confusing because it requires that the antimicrobial layer be "uncovered for providing an exposed bactericidal surface." However, dependent claims (see claim 4) include a controlled release antimicrobial layer by providing a diffusion layer over the antimicrobial layer. It is unclear what is meant by "exposed" as now included in the claims. Does exposed mean that the antimicrobial has an outer surface 25 as in applicant's figure 1, or does it include the possibility of diffusion layer 30 as in figure 2? From applicant's comments, it appears that the word "exposed" was written to overcome the prior art bandage. The initial claims were so broadly written that they read over a simple bandage. Now it is unclear what is claimed. Looking to the original specification, the word "exposed" is used in claims 13, 34 and 68 to described the function of the diffusion layer, however, this does not help explain what is now claimed.

If applicant is eliminating the possibility of the diffusion layer, this should be clearly indicated. The examiner's best interpretation is that applicant wrote the claims not to eliminate the diffusion barrier, but to get around the prior art and indicate that the antimicrobial layer is oriented in a functioning, outwardly facing arrangement during the ordinary usage of the device. However, this must be clarified. All claims with this "exposed" terminology are rejected until clarification is made to the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 11, 16, 21, 86, are rejected under 35 U.S.C. 102(b) as being anticipated by Richards, US 4,059,114. The claims continue to read directly into ordinary consumer products. This conventional sanitary pad has an antimicrobial (column 5, lines 65+) incorporated into the absorbent structure and also has adhesive securing means 18. The support layer is anticipated by barrier layer 17. Regarding claim 16, this range encompasses the typical range for pad barrier layers. Regarding claim 86, the intended use of the product for exposure does not alter that fact that the claimed structure is identical to that shown by Richards. See MPEP 2114. The relevant portion is reproduced below.

APPARATUS CLAIMS MUST BE STRUCTU-RALLY DISTINGUISHABLE FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >*In re Schweiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

Claims 1, 11, 16, 17, 20, 21, 56, 66, 71, 72, 75, 76, 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Young Sr., et al., US 5,432,000. Note figures 23,

24 directed to a feminine product including adhesive 520. The antimicrobial may be sustained release. See column 34, lines 45-46. Backing sheet 516 anticipates the claimed support layer. Regarding claim 71, see column 41, line 45. Regarding claims 17 and 72, the examiner takes the position that 0.004 inches is "about 0.125 mm" as claimed.

Regarding claims 20 and 75, in this interpretation, the subbing layer can be anticipated by backing sheet 516, with the claimed support layer being anticipated by cover sheet 512 which surrounds the pad 216.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 15, 69, 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young Sr. '000. Young does not disclose a preferred thickness for the absorbent containing the antimicrobial, however, it would be obvious to one of ordinary skill in the art to manufacture any thickness absorbent dependent upon environment of use, particularly in view that Young clearly states the absorbent layer containing the antimicrobial may be compressed and densified.

Allowable Subject Matter

Claims 2, 12, 13, 22-42, 57, 59-65, 67, 73, 74, 85 are allowed.

Claims 4, 18, 19, 68 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 4, none of the prior art shows or suggests the arrangement of the layers and the diffusion layer providing a controlled release.

Conclusion

Applicant should note that the examiner is not required to apply all possible prior art rejections, even with the applied references above. Additional claims may be anticipated or obvious in view of the above applied references, but have not been analyzed due to time constraints. The examiner is only required to reject each unpatentable claim one time. Applicant is expected to read all the references cited by the examiner, particularly those applied, and make their own determinations as to anticipation or obviousness for each claim. The lack of a rejection of a claim over a particular reference is not an indication that the claim is allowable over that reference, unless otherwise indicated.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on 571/272-8373.

/Sharon E. Kennedy/
Sharon E. Kennedy
Primary Examiner
Art Unit 1615